

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARK FREGIA,

Plaintiff,

v.

MIRANDA, *et al.*,

Defendants.

Case No. 1:21-cv-01068-AWI-BAM (PC)

ORDER GRANTING IN PART PLAINTIFF'S
MOTION FOR EXTENSION OF TIME TO
FILE OPPOSITION TO DEFENDANT
SAVAGE'S MOTION FOR SUMMARY
JUDGMENT

(ECF No. 79)

THIRTY (30) DAY DEADLINE

Plaintiff Mark Fregia ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Ridge and Savage based on Plaintiff's claims that Defendants were deliberately indifferent to Plaintiff's serious medical needs by continuing to prescribe medications that caused him to suffer lichen planus, and then failed to treat such skin condition.

On July 14, 2022, Defendant Savage filed a motion for summary judgment on the grounds that the undisputed facts establish that Defendant Savage was not deliberately indifferent to Plaintiff's medical needs under the Eighth Amendment, Defendant Savage is entitled to qualified immunity, and Plaintiff failed to exhaust his administrative remedies prior to filing suit against Defendant Savage. (ECF No. 75.) Plaintiff's opposition to Defendant Savage's motion for summary judgment was therefore due on or before August 8, 2022.

1 Currently before the Court is Plaintiff's motion for a sixty-day extension of time to file an
2 opposition to Defendant Savage's motion for summary judgment, dated July 29, 2022 and filed
3 August 8, 2022. (ECF No. 79.) Defendants Savage and Ridge have not yet had the opportunity
4 to file a response to Plaintiff's motion, but the Court finds a response unnecessary. The motion is
5 deemed submitted. Local Rule 230(l).

6 In his motion, Plaintiff states that he received a copy of Defendant Savage's motion or
7 summary judgment on or about July 20, 2022. (ECF No. 79.) Plaintiff states that his building has
8 been on segregated quarantine for nearly three weeks, with no law library access. The paging
9 system service is slow and not a foolproof guarantee of the safety, confidentiality, or timeliness of
10 documents. Due to these COVID-19 restrictions, and because Plaintiff is preparing objections to
11 the findings and recommendations in another pending suit, Plaintiff requests a sixty-day extension
12 of time to file his opposition to Defendant Savage's motion for summary judgment. Plaintiff
13 further argues that he is preparing a motion for default judgment in this matter, and hopes that the
14 Court will rule on that motion before he submits his opposition to Defendant Savage's motion for
15 summary judgment. (*Id.*)

16 Having considered the request, the Court finds that Plaintiff's prolonged lack of access to
17 the law library at his institution sets forth good cause to grant, in part, Plaintiff's motion for
18 extension of time. The Court finds that an extension of thirty days is appropriate under the
19 circumstances, and that Defendants will not be prejudiced by the brief extension granted here.

20 With respect to Plaintiff's anticipated motion for default judgment, the Court notes that
21 Plaintiff has not indicated on what grounds such a motion will be filed, and at this time the Court
22 is not aware of any reason why a default judgment would be appropriate in this action.
23 Accordingly, Plaintiff's preparation of a motion for default judgment does not provide good cause
24 for the extension of this deadline.

25 If Plaintiff continues to experience limited access to the law library at his institution, he
26 may file another request for an appropriate extension of time to file his opposition. Plaintiff's
27 request must be supported by good cause.

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Accordingly, IT IS HEREBY ORDERED as follows:

1. Plaintiff's motion for extension of time, (ECF No. 79), is GRANTED IN PART;
2. Plaintiff's opposition to Defendant Savage's motion for summary judgment, (ECF No. 75), is due within **thirty (30) days** from the date of service of this order; and
3. **If Plaintiff fails to file an opposition in compliance with this order or fails to file a motion for extension of time supported by good cause, the Court will recommend dismissal of Plaintiff's claims against Defendant Savage due to Plaintiff's failure to oppose the motion for summary judgment and failure to prosecute.**

IT IS SO ORDERED.

Dated: August 12, 2022

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE